

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no.:	3090 of 2021
First date of hearing:	22.09.2021
Date of decision:	10.11.2021

Usha Yadav

R/o: - 643/22, Street 6, Shivaji Park, Gurugram, Haryana

Complainant

Versus

M/s Apex Buildwell Private Limited

Having Regd. office at: - 14A/36, WEA Karol Bagh, New
Delhi-110020

Respondent

CORAM:

Dr. K.K. Khandelwal

Chairman

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Ankur Berry (Advocate)

Complainant

Sh. Sandeep Chaudhary (Advocate)

Respondent

ORDER

1. The present complaint dated 09.08.2021 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is

inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions as provided under the provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sno.	Heads			Information	
1.	Project name and location			"Our Homes", Sector 37-C, Gurugram.	
2.	Project area			10.144 acres	
3.	Nature of the project			Low cost /Affordable group housing colony	
4.	DTCP license no.			13 of 2012 dated 22.02.2012	
5.	License validity status			01.12.2019	
6.	Name of licensee			Prime IT Solution & Phonix Datatech Service	
7.	RERA registration details				
	S no.	Registration No.	Registration date	Valid up to	Area
	i.	40 of 2019	08.07.2019	01.12.2019	10.14 acres
8.	Unit no.			663, 6 th floor, Tower Daisy	
9.	Unit measuring			48 sq. mtrs.	
10.	Date of execution of flat buyer agreement			30.03.2013	



11.	Payment plan	Time linked Plan
12.	Total consideration	Rs.16,00,000/- (as per BBA at annexure P2 page 28 of complaint)
13.	Total amount paid by the complainant	Rs.27,66,968/- (as alleged by the complainant at page 8 of complaint)
14.	Due date of delivery of possession as per clause 3(a) of the flat buyer agreement 36 months or from the date of commencement of construction upon receipt of all approvals + 6 months' grace period [Page 34 of complaint]	02.06.2017 (36 + 6 months from start date of construction i.e., date of consent to establish which is 02.12.2013) (Note: Grace period allowed)
15.	Delay in handing over possession till the offer of possession (19.03.2020) + 2 months i.e., 19.05.2020	2 years 11 month 17 days
16.	Occupation certificate	i. 19.5.2017 Primary School ii. 29.11.2019 Type-1 (5 nos. towers), Type-1 (3 nos. towers), Type-2 (2 nos. towers) iii. 24.02.2020 Type-1 (16 nos. towers) & Commercial
17.	Offer of possession	19.03.2020

B. Facts of the complaint

3. The complainant pleaded the complaint on the following facts:

- a. That the present complaint is being filed by the complainant against the respondent company who failed to hand over the possession of unit in question as per the clause 3 of the apartment buyer agreement. That instead of delivering the possession of the unit as promised, the respondent company has delayed and breached its set of obligations. It is further submitted that the respondent company has kept the complainant in the dark since year 2013 and for last 8 years the complainant has been cheated to. Therefore, the complainant prays to this hon'ble authority for directing the respondent company for delivering the possession of the unit along with delayed possession charges due on account of delay in offering the possession of the unit in question as per the prescribed rate of interest.
- b. That the complainant has invested her hard-earned money in the project of respondent company believing that the promises made by the respondent company would be fulfilled and the complainant will get the unit by 02.12.2016. It is humbly submitted that the complainant is running from pillar to post to get possession of the unit for years. That it is pertinent to mention that the booking was made way back in the year 2013 and till no possession has been offered. that respondent company namely, M/s Apex Buildwell Private Limited is a company registered under the companies Act, 1956 having its registered office at 14A/36, W.E.A. Karol Bagh, New Delhi-110005, India. The respondent company claims to be a leading name in real estate sector. That the

present complaint is qua the project under the name and style of '**Our Homes**' situated in Sector 37C, Gurugram, Haryana.

- c. That in January 2013, the complainant in desire of an affordable home visited the site office of the respondent company, where she was lured by the brochures and catalogues shown by the agents/ broker/ officials/ representatives of the respondent company and decided to buy a 2BHK, residential apartment in the project 'Our Home' of the respondent company. That the complainant being a lady was told by the company/promoter/respondent representatives that an apartment in a low cost/affordable group housing could be bought only at a premium of Rs. 12,00,000/- over and above the basic sale price of Rs. 16,00,000/-. The complainant believing the representation, statements and promises of the company/promoter/respondent agreed to do the same and accordingly a payment of Rs. 12,00,000/- was made by the complainant to the company officials.
- d. That the company/promoter/respondent however instead of giving a receipt on its own letter head gave the complainant a letter/ receipt dated 07.01.2013 under the letter head of M/s Krishna Realtech acknowledging the receipt of Rs. 12,00,000/- on behalf of the respondent. The receipt was protested upon by the complainant, however the respondent informed the complainant that the M/s Krishna Realtech was their sister concern and the payment would not be an issue. The copy of letter/ receipt dated 07.01.2013 under the letter head of M/s Krishna Realtech

- acknowledging the receipt of Rs. 12,00,000/- is annexed herewith and marked as **Annexure P-1**.
- e. That thereafter the complainant made due payments as and when demanded by the respondent company. Thereafter the ABA was executed on 30.03.2013. That as per the clause 3 of the ABA dated 30.03.2013, the possession was to be delivered within a period of 36 months from the date of commencement of construction of the complex. Thus, from the bare reading of the ABA it is clear that the intended and promised date of possession was 36 months period from 02.12.2013, i.e the date of approval of consent to establish. The copy ABA dated 30.03.2013 is annexed herewith and marked as **Annexure P-2**.
- f. That as per the ABA, the delivery of possession was to be made within 36 months, i.e on 02.12.2016. That the complainant has been diligent and noticing that the project was delayed beyond time visited the project site. That upon visit in 2016 the complainant was astonished to see the status of the project, which was nowhere near completion. It is pertinent to mention here that the respondent company has failed to adhere with the terms and conditions of ABA clause 3 and has thus comes under purview of the provisions of Section 18 of the RERA Act, 2016 as the respondent has failed to duly complete the project and give the possession of the unit in accordance with the terms of the ABA.
- g. That the complainant has continued to pay the remaining installments as per the payment schedule plan of the ABA and has made payment of Rs. 12,00,000/- as premium amount and

Rs.15,66,968/- for basic sale price till date. That even after payment of total of Rs. 27,66,968/- the possession has still not been given to the complainant. The complainant has fulfilled her obligation of making timely payments as and when the demands were raised, and the respondent was obligated to handover the possession of the unit by 02.12.2016.

- h. That on 05.08.2019 instead of delivering possession to the complainant, the respondent sent a letter to the complainant giving vague reasons of delay. The respondent admitted to delays in the completion of the project and also informed the complainant that the consent to establish was received on 02.12.2013, whereupon the construction had started in the project. Thus, the respondent, starting the construction on 02.12.2013 ought to have deliver the possession to the complainant on 02.12.2016 in terms of the clause 3 of the ABA dated 30.03.2013. The copy of letter dated 05.08.2019 is annexed herewith and marked as **Annexure P-3**.
- i. Thereafter the complainant visited the office of the respondent at many times, but all her efforts were in vain since neither did the respondent offer the possession of the unit to the complainant nor did the respondent give any tentative time for delivery. Being tired of waiting the complainant gave a complaint to the hon'ble authority on 29.06.2021praying for possession of the unit, detailing therein the issue and hoping for redressal of her long standing paid. The hon'ble authority immediately responded to the complaint dated 29.06.2021 and directed the complainant to file a complaint with the authority in section 31 read with rule 28(1).

The copy of complaint dated 29.06.2021 is annexed herewith and marked as **Annexure P-5**. The copy of response dated 30.06.2021 is annexed herewith and marked as **Annexure P-6**.

- j. The complainant after receiving the response dated 30.06.2021 from the hon'ble authority, hoping to resolve the matter amicably, visited the office of the respondent company and prayed for delivery of the possession however, instead of getting possession the respondent company handed the complainant with a statement of accounts containing undue and illegal demands. That as per the payment plan attached as Annexure A with the ABA the complainant was to pay 5% of the basic sale price at the time of offer of possession however the statement of accounts provided by the respondent company contained charges under the following heads:

PAYMENT HEAD	AMOUNT (including tax)
Installment-BSP	86400.00
Interest on Late Payment as on 22.07.2021	18013.00
Labour Cess	7094.00
Power Backup	59000.00
Meter charges, security Deposit & Connection Charges	23600.00
Intercom & Misc. Charges	2950.00
Legal & Administrative Charges	11800.00
VAT Recovery	11394.43
Holding Charges	91332.00
IFMS	40000.00
Maintenance	28320.00

Sinking Fund

3000.00

The above detailed charges could not have charged by the respondent company since all charges ought to as per the agreed terms defined within the ABA dated 30.03.2013. Further the respondent could not have charged any late fee on the last installment or holding charges since till date the possession has not been offered to the complainant. The copy of the statement of dues dated 22.07.2021 is annexed herewith and marked as **Annexure P-6**.

- k. That the Respondent has indulged in fraudulent trade practice as the unit of the Complainant being in a low-income housing project could not have been sold on a premium of Rs. 12,00,000/-. The Respondent Company took a huge sum of money from the Complainant under the pretext of booking and ensuring an allotment in the project "Our Homes" and the said payment even though taken by the Respondent, the receipt under the letter head of a sister concern / broker / agent of the Respondent. The issuance of the receipt dated 07.01.2013 by M/s Krishna Realtech shows clearly that the Respondent has been indulging in unfair and illegal trade practice and thus it is prayed that the registration of the project under RERA Act, ought to be revoked under Section 7 of the RERA Act, 2016.
- l. That interestingly, the respondent has never issued any allotment letter to the complainant, even though the respondent company acknowledges that the flat no. 663, in tower daisy, in project "our homes" has been allotted to the complainant. The actual intent of

the respondent company behind non-issuance of the allotment is unclear and the complainant prays for relief of issuance of allotment letter for the residential unit.

- m. That the respondent company has indulged in the acts of cheating and misappropriation, and it humbly prayed to this hon'ble authority, such of the respondent company be condemned and punished and the respondents be reprimanded for the same. That the non-compliance of the obligations by the respondent company is apparent and is within the jurisdiction of this hon'ble authority in terms with the law decided by the Hon'ble Supreme Court in matter titled Simmi Sikka versus M/s Emaar MGF Land Ltd.
- n. The respondent company has failed to honor the terms and conditions of the ABA between the parties. That the respondent company though failed to honor the terms of date of delivery of possession as per the ABA, the respondent company has to pay dues of the interest on delayed period and thus the present complaint has been instituted before this hon'ble authority for the relief delayed possession interest.
- o. Further even after 8 years since the booking the residential house in 2013, the complainant has still not got the possession. The period of eight years for due delivery of possession is undue, illegal and ought to be compensated for. The complainant reserves her right to go before the appropriate forum to be compensated against the mental, physical and financial trauma she has undergone in the last 8 years since the booking of the residential unit. The recent visit to the unit shows that the unit is in dilapidated condition and

still not fit for use. The pictures of the unit in question is annexed herewith and marked as **Annexure P-7**.

- p. That on the basis of the above raised submissions it can be concluded that the respondent company, having charged enormous premium amount, having failed to complete the construction of the unit in question in time and delaying the handing over the possession of the unit of the complainant in accordance with the agreed terms of ABA, have committed grave unfair practices and breach of the agreed terms between the parties. That there is apparent breach and violation of the statute and law defined under section 18 of the Real Estate (Regulation and Development) Act, 2016.

C. Relief sought by the complainant:

4. The complainant has sought following reliefs:

- a. Direct the respondent company to pay interest at the prescribed rate per annum on the delay in handing over the possession from 02.12.2016 till actual date of possession in view of the violation of Section 18 of the RERA Act, 2016.
- b. Direct the respondent company to provide details of the premium of ₹ 12,00,000/- charged on a low-income housing over and above the basic cost.
- c. Direct the respondent company to issue allotment letter.
- d. Direct the respondent company to provide possession after completing the unit and provide the amenities and furnishing as promised.
- e. Any other relief which this hon'ble authority deems fit and proper.

5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds:
- a. It is at the very outset it is submitted that the complainant has no cause of action against the answering respondent and the alleged cause of action is nothing but false and frivolous and the respondent has neither caused any violation of the provisions of the act nor caused any breach of agreed obligations as per the agreement between the parties. Since the respondent has already completed the project promoted under the low cost/affordable housing policy, and therefore, the provisions of section 18 of the act are not applicable as it cannot be said that the promoter has failed to complete or unable to give possession of the apartment.
 - b. That the complaint under reply is neither tenable nor maintainable and has been filed with an oblique motive when the respondent has already offered possession of the flat vide offer letter dated 19.03.2020. Instead of making the balance payments, the complainant has ventured in filing the present complaint with an intent to gain wrongfully and arm twist the respondent through the process of law once all obligations on behalf of the respondent are complete.
 - c. It is stated that the respondent has been very well committed to the development of the real estate project and secured the occupation

certificates for both of the phases of the project named "our homes" and offered possession to the complainant. And the delay occasioned in delivering the possession of the project is only because of explainable and extendable as per the agreed terms i.e clause 3 of the apartment buyer's agreement and is due to causes beyond the control of the respondent.

- d. That the brief facts in the development and completion of the said project are firstly, on grant of license bearing no. 13/2012 dated 22.02.2012 the respondent applied for all other relevant permissions and could secure the BRIII for sanction of building plans only on 7.05.2013 and the consent to establish by the office of Haryana State Pollution Control Board, Panchkula was only granted on 2.12.2013. Since then the respondent is continuing the construction of the project, but to the misery the license so granted expired on 21.02.2016 i.e. prior to the permissible period of construction of 48 months and since 11.02.2016 the respondent had been seeking the renewal of the license from the office of Director General Town & Country Planning, Haryana and finally the application dated 14.03.2016 of the respondent was allowed and the license was renewed on 26.04.2019 and the respondent in a duty bound manner had completed the entire construction and development of the project and obtained the first occupation certificate on 29.11.2019 and the second occupation certificate on 24.02.2020.
- e. That the provisions of Real Estate (Regulation and Development) Act, 2016 came into force on 28.07.2017 for which the respondent

duly filed an application dated 28.08.2017 and due to lapse of license No. 13/2012 the same got dismissed vide orders dated 19.01.2018 and finally after regular follow ups and initial rejections the project has been registered vide registration no. 40 of 2019 dated 8.07.2019 and the said fact even lead to further operational obstacles & restrictions of funds in completion of the project and leading to delay in completion of the project which had been beyond the control of the respondents and was extendable as per the agreed terms.

- f. That the respondent company had been hard trying to avail all the approvals, permissions and sanctions from the relevant authorities and discharging the additional costs of renewal of license, plans and sanctions. And had the approvals & renewal of license be granted in time the respondent, would have duly completed the project within the permissible time period. The respondent has already applied to Directorate of Town and Country Planning, Haryana for declaring the time taken in renewal of the license as zero period and the copy of the same is annexed herewith.
- g. More so the bans to construction activity imposed by the NGT from time to time and lastly in the months of October – November 2019 have further led to delay in completion of the project which are per se beyond the control of the respondent.
- h. That if the period of pendency of the license is condoned and extended than the respondent has delivered the project well within the agreed period of completion and therefore, there is no occasion

or cause of action in favour of the complainant to file the present complaint.

- i. That thereby, the delay being occasioned is beyond the control of the respondent i.e. Firstly due to the grant of consent to establish and thereafter due to the lapse of license and the same is excusable as contemplated and agreed by the parties vide para 3(b) (i) & (ii) of the apartment buyer's agreement executed between the parties and the agreed period of 36 months plus 6 months grace period is extendable and the complainant is estopped from filing the present complaint.
- j. Further it is stated that it is the respondent who had been suffering due to the delay that is being occasioned and has to face extra charges and costs and expenses in getting all the above permissions renewed and in particular the renewal of license and the costs of registration under RERA. Pertinent to note that the respondent has not received any exaggerated advance amounts from the complainant and construction as on date is much more advanced than the amount received. Hence there is no cause or occasion to file the present complaint.
- k. That the complaint so preferred is hopelessly barred by limitation and the complainant is estopped from filling the present complaint due to his own acts, conduct and latches. The complainant is estopped to file the present complaint due to his own acts and conduct of accepting the possession upon securing best possible deal for himself and having never objected to the delay being so

occasioned. Pertinent to note that the entire obligations of completion of the project is upon the respondent and the failure to pay the due amounts in a timely manner by so many of the allottees including the complainant have led to multiple problems and extra costs on the respondent leading to further delays.

- l. That the complainant does not have any cause of action under the jurisdiction of the hon'ble authority and hence the complaint is liable to be dismissed.
 - m. That reliefs claimed are beyond the scope of jurisdiction of the hon'ble authority under section 36 to 38 of the Act. And hence the complaint on the face of it is liable to be rejected.
7. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

E. Jurisdiction of the authority

8. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I. Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

E. II. Subject matter jurisdiction

10. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainant

F.I. Direct the respondent company to pay interest at the prescribed rate per annum on the delay in handing over the possession from 02.12.2016 till actual date of possession in view of the violation of Section 18 of the RERA Act,2016.

11. In the present complaint, the complainant intends to continue with the project and is seeking delayed possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

12. Clause 3(a) of the flat buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below: -

"3. POSSESSION

(a) Offer of possession:

That subject to terms of this Clause 3, and subject to the APARTMENT ALLOTTEE(S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the DEVELOPER by the APARTMENT ALLOTTEE(S) under this agreement etc., as prescribed by the DEVELOPER, the DEVELOPER proposes to hand over the possession of

the APARTMENT within a period of thirty (36) months with a grace period of 6 months, from the date of commencement of construction of the Complex upon the receipt of all project related approvals including sanction of building plan/revised plan and approval of all concerned authorities including the Fire Service Department , Civil Aviation Department, Traffic Department, Pollution Control Department etc. as may be required for commencing, carrying on and completing the said Complex subject to force majeure, restraints or restriction from any court/authorities. It is however understood between the parties that the possession of various Blocks/Towers comprised in the Complex as also the various common facilities planned therein shall be ready & completed in phases and will be handed over to the allottees of different Block/Towers as and when completed in a phased manner."

13. The authority has gone through the possession clause of the agreement and observed that the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single situation may make the possession clause irrelevant for the purpose of allottee and the committed date for handing over possession loses its meaning. If the said possession clause is read in entirety, the time period of handing over possession is only a tentative period for completion of the construction of the flat in question and the promoter is aiming to extend this time period indefinitely on one eventuality or the other. Moreover, the said clause is an inclusive clause wherein the numerous approvals have been mentioned for commencement of construction and the said approvals are sole liability of the promoter for which allottee cannot be allowed to suffer. It is settled proposition of law that one cannot get the advantage of his own fault. The incorporation of such

clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

Admissibility of grace period: The apartment buyer's agreement was executed on 30.03.2013 and as per clause 3(a) of the said agreement, the promoter has proposed to hand over the possession of the said unit within 36 months with an extended period of 6 months from the date of commencement of construction. The consent to establish by the office of Haryana State Pollution Board, Panchkula was granted on 02.12.2013. The due date of handing over possession has been calculated from the date of consent to establish. Since in the present case, the promoter is seeking 6 months' time as grace period and the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause. Accordingly, the authority literally interpreting the same allows this grace period of 6 months to the promoter at this stage.

14. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

15. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
16. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 10.11.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
17. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation —For the purpose of this clause—

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

18. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **9.30%** by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.

19. Accordingly, the complainant is entitled for delayed possession charges as per the proviso of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 at the prescribed rate of interest i.e., 9.30% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession i.e., 02.06.2017 till the offer of possession + two months i.e., 19.05.2020.

F. II. Direct the respondent company to provide details of the premium of ₹ 12,00,000/- charged on a low-income housing over and above the basic cost.

20. While filing complaint, it is pleaded by the complainant that beside a sum of Rs.16,00,000/-, she has also paid a sum of Rs.12,00,000/- to the respondent-builder through Krishana Realtech Group. A receipt with regards to payment of that amount was issued on 07.01.2013. Thus, in this way the total amount of sale consideration deposited against the allotted unit comes to Rs.16,00,000 + 12,00,000 and which comes to Rs.28,00,000/-. So, the claimant is entitled to know about the details of that amount from the respondent-builder. But the plea advanced in this regard is the devoid of merit.

21. First of all, there is nothing on the record to connect the receipt dated 07.01.2013 with allotted unit. It is not evident as to whether the

respondent-builder has any connection with M/s krishana Realtech Group.

22. Secondly, after allotment of the unit there was an apartment buyer agreement executed between the parties on 30.03.2013. A perusal of this document and clause 1.2 shows the basic selling price of the allotted unit to be Rs.16,00,000/-. The same time is mentioned in the payment plan annexed at annexure A of page 53 of the complaint.

23. Lastly, there in letter dated 29.06.2021 at page 59 of complaint written by the complainant to the harera, Gurugram and then the basic selling price of the apartment was mentioned as Rs.16,00,000/-. So, the plea of the claimant with respect to payment of Rs.12,00,000/- over and above the amount already agreed upon as total sale consideration of the allotted unit does not hold ground and is un-tenable.

F.III. Direct the respondent company to issue allotment letter.

24. The respondent company has already entered into builder buyer agreement with the complainant on 30.03.2013. The respondent has also offered possession of the said unit dated 19.03.2020 after issuance of occupation certificate. Moreover, the builder buyer agreement holds same significance therefore, there is no need to issue an allotment letter at this stage.

F. IV. Direct the respondent company to provide possession after completing the unit and provide the amenities and furnishing as promised

25. As the OC has been received with respect to the project and the respondent has already offered the possession of the unit dated 19.03.2020. Therefore, the authority directs the complainant to take the possession of the unit within 2 months from this order as per provisions of section 19(10).
26. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 3(a) of the agreement executed between the parties on 30.03.2013, the possession of the subject apartment was to be delivered within 36 months from the date of commencement of construction. The period of 36 months expired on 02.12.2016. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 02.06.2017. The respondent has offered the possession of the subject apartment on 19.03.2020. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 02.06.2017 till the offer of the possession plus two months i.e., 19.05.2020, at prescribed rate i.e., 9.30 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G. Directions of the authority

27. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):

- i. The respondent is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e., 02.06.2017 till the offer of possession plus two months i.e., 19.05.2020.
- ii. The arrears of such interest accrued from 02.06.2017 till the offer of possession plus two months i.e., 19.05.2020 shall be paid by the promoters to the allottee within a period of 90 days from date of this order.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoters shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. The respondents shall not charge anything from the complainant which is not the part of the agreement. However, holding charges shall not be charged by the promoters at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.

- vi. The respondent shall execute the conveyance deed within 3 months of this order upon payment of requisite stamp duty as per the norms of the state government.

28. Complaint stands disposed of.

29. File be consigned to registry.


(Dr. K.K. Khandelwal)

Chairman


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.11.2021